UNITED
NATIONS

AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 477

Case No. 507: ISHIKAWA

Against: The Secretary-General
of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Roger Pinto, President; Mr. Ahmed Osman, Second Vice-President; Mr. Francisco A. Forteza;

Whereas, on 4 April 1989, Toshio Ishikawa, a former staff member of the United Nations, filed an application, the pleas of which are basically that the sum of US$ 1,020 be paid to him as education grant for his son;

Whereas the Respondent filed his answer on 31 May 1989;

Whereas the Applicant filed written observations on 15 June 1989;

Whereas the facts in the case are as follows:

Toshio Ishikawa joined the United Nations on 10 October 1957 as a Field Service Officer. He served the Organization in different peace-keeping and observer missions at different duty stations until 15 February 1988, when he separated from the service of the United Nations as Deputy Chief Finance Officer of the United Nations Interim Force in Lebanon (UNIFIL), having reached the FS-6 level.

At the time of the events that gave rise to the present proceedings, the Applicant was stationed in Naqoura, Lebanon, and on the Administration's recommendation was residing with his family in Nahariya, Israel. No educational facilities existed in the immediate UNIFIL area of South Lebanon, Nahariya, Akko or Haifa. The nearest accredited school using English as a language of instruction was more than 75 miles away. From 1984

until 15 February 1988, the Applicant's youngest son, Kenji Ishikawa, born on 20 June 1981, attended the International Education Assistance Centre, an educational institution that had been founded by parents as a substitute for a United Nations school.

On 1 January 1987, the United Nations Administration changed the status of UNIFIL from a "special mission ... non-family" duty station to that of "family mission" duty station. Although pursuant to staff regulation 3.2 and staff rule 103.20 expatriate staff continued to be entitled to an education grant to enable them to finance the education of their children at a school, university or similar educational institution, the change to "family mission" duty station entailed the application of a new system of entitlements whereby the Administration facilitated children's attendance at schools in Jerusalem or Herzliyya. UNIFIL staff with children residing with them at Nahariya could opt between: (i) obtaining a double rental subsidy and maintaining two households, one at the duty station (Nahariya) and the other near the school, (ii) obtaining reimbursement of transportation costs from Nahariya to an accredited school or (iii) payment of board at an accredited school in Israel.

On 11 August 1987, the Applicant wrote to the Chief Administrative Officer requesting, pursuant to ST/AI/181/Rev.7, paragraph 22(c)(i) concerning education grant, approval from the Administration for payment of a correspondence course for his son. He argued essentially that there was no suitable school available in Nahariya, the nearest suitable school being located in Herzliyya, over 75 miles away, too long a commute for a child who was only six years old. Under the circumstances, he believed that "a correspondence course would be the best available substitute for full-time attendance at a school of a type not available in Nahariya". The Applicant's request was forwarded to the Allowances and Benefits Unit of the Office of Personnel Services.

On 15 February 1988, the Applicant claimed, as education grant in respect of his son for the year September 1986-June 1987 and the period August 1987-15 February 1988, reimbursement of educational expenses totalling $1,732.54 comprising tuition paid to the International Education Assistance Centre, the costs of a correspondence course and private tutor's fees.

In a memorandum dated 27 April 1988, a Personnel Officer in the Allowances and Benefits Unit of the Office of Human Resources Management* (OHRM) recommended to the Chief of the Staff Services, OHRM, that the Applicant's claim be denied on the ground that the Centre was "not an accredited school or recognized by any authority". In addition, it was only because it did not offer a complete educational programme that a correspondence course and private tutor were required. Pursuant to paragraph 22(c) of ST/AI/181/Rev.7, correspondence courses are only allowed "where such courses are the best available substitute for full-time attendance at a type of school not available at the duty station".

On 3 June 1988, the Personnel Officer in the Allowances and Benefits Unit informed the Chief, Field Personnel Section, Office of Field Operational and External Support Activities, Office of General Services (OGS), that the Applicant's claim had "been denied on the grounds that it does not meet the requirements of staff rule 103.20(b) since the International Education Assistance Centre is not an accredited educational institution and there are regular school facilities available in the area of the duty station". On 20 June 1988, the Chief, Field Personnel Section, Field Operations Division, OGS, transmitted to the Applicant the memorandum from the Personnel Officer, Allowances and Benefits Unit, and informed him that his request for reimbursement of educational expenses had been rejected.

On 21 July 1988, the Applicant requested the Secretary-General to review the administrative decision to deny his claim for reimbursement of educational expenses.

On 3 October 1988, the Applicant lodged an appeal with the Joint Appeal Board. The Board adopted its report on 24 February 1989. Its conclusions and recommendation read as follows:

"Conclusions and recommendation

22. The Panel concludes that, since the education-related expenditures claimed by the appellant did not fall within the parameters of the existing rules and regulations, in

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* Successor of the Office of Personnel Services.

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particular, staff rule 103.20(b) and ST/AI/181/Rev.7 and ST/AI/280/Rev.3, he was not entitled to payment of education grant in respect of:

(a) attendance at the International Education Assistance Centre;

(b) the correspondence course of Home Study International;

(c) private tuition pertaining to said correspondence course.

23. Therefore, the Panel makes no recommendation in support of the appeal."

On 7 March 1989, the Under-Secretary-General for Administration and Management informed the Applicant that the Secretary-General, having re-examined his case in the light of the Board's report, had decided to maintain the contested decision and to take no further action on his case.

On 4 April 1989, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The Applicant incurred the expenses claimed in his genuine efforts to educate his son under exceptionally difficult conditions.

2. The offering of alternative schools did not justify a denial by the Administration of educational expenses otherwise incurred in the UNIFIL area in accordance with staff regulation 3.2 and staff rule 103.20.

3. Staff regulation 3.2 and staff rule 103.20 do not limit reimbursable expenses to only those incurred at an "accredited" educational institution.

Whereas the Respondent's principal contentions are:

1. Pursuant to staff regulation 3.2 and staff rule 103.20, the Applicant is not entitled to education grant for his son's school year 1986-1987 and the period August 1987 to 15 February 1988 inasmuch as the International Education Assistance Centre in Nahariya did not qualify as a school.

2. The determination of what constitutes a school was made in exercise of the discretionary power conferred upon the Administration by staff regulation 3.2. That power was exercised in a just and proper way.

3. The decision to grant financial assistance in meeting educational costs under the new UNIFIL Mission status was legitimately motivated by the Secretary-General's obligation to implement policy changes (Conversion of Mission) by a smooth transition from one set of arrangements to another. It did not affect the terms of education grant eligibility.

The Tribunal, having deliberated from 26 April to 18 May 1990, now pronounces the following judgement:

I. The Applicant served the United Nations for 30 years, from 1957 to 1988. In 1987-1988, as Deputy Chief Finance Officer of UNIFIL stationed in Naqoura (Lebanon), he resided with his family, on the recommendation of the Administration, in Nahariya (Israel). His son Kenji, born in 1981, was of school age. However, the nearest school using English as a language of instruction was more than 75 miles away from the Applicant's duty station. The Applicant enrolled his son at the International Education Assistance Centre, an establishment founded by parents as a substitute for a United Nations school. Tuition costs totalled $US 1,020, for which the Applicant claimed reimbursement from the Administration. However, the Centre was not accredited by the United Nations. The Administration therefore rightly refused to pay this amount to the Applicant as education grant.

II. Under the applicable rules, the Applicant could have received an education grant by opting for one of the following three solutions:

(a) Requesting a double rental subsidy and maintaining two households, one at the duty station (Nahariya) and the other near an accredited school;

(b) Requesting reimbursement of transportation costs between Nahariya and an accredited school;

(c) Requesting payment of board at an accredited school.

Any of these solutions would have required the Administration to pay an amount greater than that claimed by the Applicant.

III. The Tribunal notes that none of these three possibilities could reasonably have been used, given the particular circumstances existing at the Applicant's duty station at the time and also the age of the child.

IV. The Tribunal considers that the Applicant found himself in a difficult situation. He had recourse to an education centre set up by other United Nations staff with schoolage children. As the Respondent points out, the Centre in question did not meet the standards set by the Administration. However, it was not a profit-making establishment, simply a last resort for parents. Given the exceptional circumstances existing in the region, the Administration could have helped parents find another solution. It chose not to. In this particular case, the Tribunal considers that the Administration had a responsibility to fulfil.

V. The Tribunal evaluates the loss to the Applicant at $US 1,000.

VI. On the above grounds, the Tribunal decides that the Respondent shall pay the Applicant the sum of $US 1,000.

VII. All the Applicant's other pleas are rejected.

(Signatures)

Roger PINTO
President

Ahmed OSMAN
Vice-President

Francisco A. FORTEZA
Member

New York, 18 May 1990

R. Maria VICIEN-MILBURN
Executive Secretary